

SERVICE DATE – DECEMBER 30, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-839 (Sub-No. 1X)

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY–
ABANDONMENT EXEMPTION–IN BARBER COUNTY, KS

Decided: December 27, 2002

Kiowa, Hardtner and Pacific Railroad Company (KHP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its entire 9.93-mile line of railroad between milepost 571.85 at Kiowa and milepost 581.78 at Hardtner, in Barber County, KS. Notice of the exemption was served and published in the Federal Register on October 3, 2002 (67 FR 62094). The exemption became effective on November 2, 2002.

On December 12, 2002, the V and S Railway, Inc. (VSRI), late-filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) in order to negotiate with KHP for acquisition of the right-of-way for use as a recreational trail.¹ VSRI submitted a statement indicating its willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. Also on December 12, 2002, KHP advised the Board that it has not consummated the abandonment and that it is willing to negotiate with VSRI for interim trail use. Accordingly, a NITU will be issued.

¹ The October 3 notice provided that trail use/rail banking requests had to be filed by October 15, 2002. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that VSRI's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company–Abandonment Exemption–In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way and the carrier is willing to enter into negotiations.² Inasmuch as KHP has not consummated the abandonment and is willing to negotiate with VSRI for the right-of-way, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision or until June 28, 2003. If no agreement is reached within 180 days, KHP may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on October 3, 2002, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice (until June 28, 2003).
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by June 28, 2003, interim trail use may be implemented. If no agreement is reached by that time, KHP may fully abandon the line.

² See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

7. This decision is effective on its service date.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary